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DATE: October 19, 2007

TO: Ald. Brian E. Yates, Chairman, and
Members of the Zoning and Planning Committee

FROM: Michael Kruse, Director of Planning and Development
Juris Alksnitis, Chief Zoning Code Official

SUBJECT: Petition #66-07(2) **DIRECTOR OF PLANNING AND DEVELOPMENT**
proposing to amend Section 30-15 by adding a new subsection 30-15(s) entitled
Planned Multi-Use Business Development (PMBD) which will allow the Board
of Aldermen to grant a special permit for a mix of compatible and complementary
commercial and residential uses on large tracts of land in any Business 4 District,
subject to certain minimum criteria for PMBDs and additional special permit
criteria relative to adequacy of public facilities; mitigation of neighborhood
impacts; housing, public transportation and traffic and parking improvements, and
utility infrastructure enhancements; compatibility and integration with its
surroundings; not inconsistent with applicable local plans or general laws;
improved access nearby; enhanced open space; excellence in place-making; and a
comprehensive signage program.

CC: Mayor David B. Cohen
Board of Aldermen
Planning and Development Board
Philip B. Herr, Chair, Comprehensive Planning Advisory Committee

RECOMMENDATION: APPROVE UPDATED DRAFT ORDINANCE

The purpose of this memorandum is to provide the Zoning and Planning Committee and the public with an update on Petition #66-07(2) for the upcoming Committee Working Session.

I. BACKGROUND

New England Development presented the initial docket item (*Petition #66-07*) at a public hearing before the Zoning and Planning Committee and Planning and Development Board on March 26, 2007. A revised draft of the proposed Zoning Ordinance text amendment was discussed at the continuation of the public hearing on April 23, 2007, which was closed that evening.

Subsequently, a number of additional revisions were incorporated into the draft text amendment by Planning Department staff seeking to address concerns raised at the public hearing and at various working sessions of the Zoning and Planning Committee. However, as the 90-day action period expired on July 22, 2007, statutory requirements pertaining to public hearings apply. (*MGL c.40A, s.5 states that if a vote to adopt any proposed zoning ordinance is not taken within ninety days after the public hearing, no action shall be taken thereon until after a subsequent public hearing is held.*)

The Planning Board discussed the initial and revised draft text amendments at length, and concluded that it needed further work as noted in their minutes of June 25, 2007. As the summer schedule of the Board of Aldermen did not accommodate another public hearing, a fall hearing date was considered. In addition, as the Planning Department continued to further revise and refine the draft text amendment consistent with direction from the Zoning and Planning Committee and input from the Planning Board, it was determined that this matter would next be docketed by the Director of Planning and Development.

The current Petition 66-07(2) as filed by the Director of Planning and Development was heard by the Zoning and Planning Committee at their September 24, 2007 public hearing. At that time, those attending the hearing offered comments, raising questions, and stating opposition or support. In particular, a revised proposal was submitted by Sean Roche and Srdjan Nedeljkovic that included changes to the proposed text and also introduced a number of new concepts. Zoning and Planning Committee members asked that the Planning Department give serious consideration to the Roche/Nedeljkovic proposal.

During the intervening time, various e-mails, meetings and discussions have occurred reviewing the Roche/Nedeljkovic proposal. The Planning Department participated in one such meeting called by Alderman Danberg. ***Subsequently, the Planning Department, with assistance of Philip Herr, Chair of the Comprehensive Planning Advisory Committee, compiled an updated draft ordinance, including selected "refinements" based on public comment along with input from others (SEE ATTACHMENT "A" – Newton PMBD Refinements, dated October 15, 2007, that provides in a tabular format a comparison of the September 24 "Hearing Version" of the text with the proposed revisions and refinements).***

It is also noted that the Planning and Development Board continued discussion of the subject petition and public comment at a meeting on October 15, 2007 and has scheduled a follow up meeting on October 22, 2007 to consider the updated draft. The Planning and Development Board generally supports the draft ordinance heard September 24, 2007, yet is open to such further refinements as may ensure better coordination with the goals and purposes of the *October 2006 Draft Newton Comprehensive Plan* currently also under review by the Zoning and Planning Committee. A copy of the Planning and Development Board's comments is also included with this memorandum (***SEE ATTACHMENT "B" – Memorandum from Planning and Development Board to Michael Kruse, dated October 18, 2007.***)

II. OVERVIEW OF REVISIONS

After much deliberation and serious consideration of the public comments received at the public hearing, as well as input from members of the Board of Aldermen, the Planning and Development Board, Philip Herr and others, the Planning Department recommends a number of sections suitable for constructive improvement and/or clarification (*SEE ATTACHMENT “C” – OCTOBER 19, 2007 UPDATED DRAFT PLANNED MULTI-USE BUSINESS DEVELOPMENT ORDINANCE RECOMMENDED BY THE PLANNING DEPARTMENT*). These further proposed changes are offered following discussion with the Law Department and *do not* necessitate a rehearing of the draft Planned Multi-Use Business Development Ordinance. The following provides an overview of changes incorporated into the updated and recommended draft ordinance, dated October 19, 2007.

PROVISIONS SUGGESTED FOR INCLUSION BY OTHERS AND RECOMMENDED BY THE PLANNING DEPARTMENT IN THE UPDATED DRAFT ORDINANCE

- Clarification and rewording of certain *Minimum Criteria for Planned Multi-Use Business Developments*.
- Added language to more clearly state intentions of the *Additional Special Permit Findings for Planned Multi-Use Business Developments*.
- Additional and expanded post-construction traffic study language to clarify factors involved in monitoring and measurement of post-construction vehicle trips.
- Provision ensuring consistency with “green zoning” requirements recently adopted by the City pursuant to Ordinance Y-17 (*but not exceeding this requirement as had been proposed in public comment*).
- Identification of electronic filing standard, subject to verification of conformity with City of Newton systems.
- Provision requiring an extensive roadway and transportation plan as part of additional filing requirements, subject to review by the City Traffic Engineer and Director of Planning and Development.
- Provision requiring a shadow study as part of additional filing requirements.
- Various stylistic revisions and specifics clarifying text without altering substance.

PROVISIONS SUGGESTED FOR INCLUSION BY OTHERS AND **NOT** RECOMMENDED BY THE PLANNING DEPARTMENT IN THE UPDATED DRAFT ORDINANCE

- Alterations to Table A reducing the number of stories and FAR while introducing a complex pre-rezoning and post-rezoning mechanism along with new FAR incentives, not evaluated for appropriateness in the City of Newton context.
- Alterations to Table A increasing beneficial open space.
- Alterations to Table A increasing certain setbacks and inserting provisions with potential for causing confusion between perimeter and internal building placement as well as in relation to pedestrian pathways.

- Alterations to existing traffic study and peer review procedures, which currently serve the City quite well.
- Changes to the parking ordinance inserting new maximum and minimum requirements, as yet unevaluated for appropriateness in a City of Newton context. ***The Planning Department does, however, support this concept and will conduct further review and explore its merits in the future.***
- Complex transportation and traffic adequacy performance guidelines. ***The Planning Department does, however, support this concept and will conduct further review and explore its merits in the future.***
- “Equity in transportation funding” concept, as it may force artificial allocation of infrastructure enhancement resources without consideration of site by site conditions and practicality of employing “alternative transportation” measures.
- Complex penalty provisions in relation to phasing completion and trip generation.
- Alterations to reducing post-construction vehicle trip generation delta threshold from 10% to 5%.

III. FURTHER INTENTIONS

The Planning Department believes that many of the other thoughtful comments and refinements offered since the September 24 hearing should be included in supplemental informational materials that would both explain the process for obtaining a Planned Multi-Use Business Development and provide guidance materials for applicants that would further articulate the intent of the PMBD Ordinance.

PROVISIONS SUGGESTED FOR INCLUSION BY OTHERS AND RECOMMENDED TO BE INCLUDED IN GUIDANCE MATERIALS PREPARED BY THE PLANNING DEPARTMENT FOLLOWING THE ADOPTION OF THE UPDATED DRAFT ORDINANCE

- Articulation of more specific considerations related to many of the criteria included in the *Additional Special Permit Findings* for a Planned Multi-Use Business Development.
- Articulation of more specific considerations in determining compatibility and integration with surrounding neighborhoods.
- Articulation of more specific considerations in determining improved access between project site and abutting parcels and streets.
- Articulation of more specific considerations in determining whether a PMDB meets requirements for “enhanced open space.”
- Articulation of more specific considerations pertaining to ensuring “pedestrian scale” and “public space” and articulating relevant factors for determining whether a PMBD is designed to meet those expectations.

IV. RECOMMENDATION

The Planning Department believes that the updated October 19, 2007 draft ordinance, now reflecting additional clarifications and refinements as a result of public, Aldermanic, and Planning and Development Board comment, is ready for adoption. A number of suggestions received during the public hearing process, which involve major revisions or introduce additional complexity are better handled in a follow-up phase for future consideration.

RECOMMENDATION: APPROVE UPDATED DRAFT ORDINANCE

ATTACHMENTS

ATTACHMENT A: Newton PMBD Refinements, compiled by Philip Herr from materials provided by others, dated October 15, 2007

ATTACHMENT B: Memorandum from Planning and Development Board to Michael Kruse, dated October 18, 2007

ATTACHMENT C: October 19, 2007 Updated draft ordinance recommended by the Planning Department

NEWTON PMBD REFINEMENTSOctober 15, 2007

Compiled by Philip Herr from materials provided by others or developed as part of the CPAC effort.

Note that managing the relationship between development and the transportation system that the City wants involves a number of items in this regulation, including general language at many locations, but with more specific interrelated provisions at four locations:

Section 7 d) provides that if later monitoring documents that the applicant's trip generation projections were much too low then actions will be required to reduce trip generation to better fit the projections, providing a strong incentive for applicants to make responsible initial estimates.

Section 3 d) makes clear that when measures such as road widening and addition of traffic signals are projected to have negative impacts on pedestrians and neighborhoods they will require justification on grounds that there is no feasible alternative.

Section 3 a) "caps" the guideline amount of acceptable trip generation, makes low levels of traffic service (e or f) unacceptable, and makes any lowering of level of service unacceptable. The derivation of the trip generation quantitative guidelines is summarized in a spreadsheet (Trip density.xls) being provided to the Planning Department but not included in this file.

Section 8 c) assures new public hearings if later proposals for changes in use would result in increased trip generation.

Table A in revised format has been incorporated into this file. The intention is for the content to be substantively unchanged, but clearer

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| <p>Section 30-15(s) Planned Multi-Use Business Development ("PMBD"). In any Business 4 District, the Board of Aldermen may give site plan approval in accordance with the procedures provided in Section 30-23, and may grant a special permit in accordance with the procedures provided in Section 30-24, for the applicable density and dimensional controls set out in Table A of this subsection for a Planned Multi-Use Business Development and the associated conditions set out below.</p> | <p>None</p> | |
| <p>1) <i>Purpose:</i> A Planned Multi-Use Business Development is one which allows development appropriate to the site and its surroundings that provides enhancements to infrastructure, protection of nearby neighborhoods, and a mix of compatible and complementary commercial and residential uses appropriate for sites located on commercial corridors, and is not in with the City's Comprehensive Plan in effect at the time of filing an application for a Planned Multi-Use Business Development.</p> | <p>1) <i>Purpose:</i> The purpose of these Planned Multi-Use Business Development provisions is to achieve development that:</p> <ul style="list-style-type: none"> - creates walkable pedestrian-scaled places that integrate a mix of compatible and complementary commercial and residential uses on commercial corridors; - is integrated with nearby neighborhoods if appropriate and is sensitive to the City's long-term aims of reducing private automobile use and the effect of traffic on our neighborhoods; - is appropriate to the site and its surroundings; | <p>Vision language refined and expanded.</p> |

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| | <ul style="list-style-type: none"> - provides enhancements to infrastructure, and - is not inconsistent with the City's Comprehensive Plan in effect at the time of filing an application for a Planned Multi-Use Business Development. | |
| <p>2) <i>Minimum Criteria for Planned Multi-Use Business Developments</i></p> <p>In order to be eligible for any approval under this Section, a PMBD must meet the following threshold criteria:</p> | None. | |
| 2(a) The Development Parcel shall be located in a Business 4 District; | 2(a) The Development Parcel shall be located in a Business 4 District, and have frontage on a Major Arterial or Minor Arterial, as classified by the City of Newton. | Narrowing the set of potential locations. |
| 2(b) The PMBD shall comply with the applicable minimum and maximum density and dimensional controls set out in Table A of this subsection; | 2(b) The PMBD shall comply with the applicable minimum and maximum density and dimensional controls set out in Table A of this subsection, rather than to those of Section 30-15 Table 3; | Added words to add clarity. |
| 2(c) The PMBD shall include a mix of compatible and complementary commercial and residential uses and shall comply with the provisions set forth in Section 30-24(f); and | 2(c) The PMBD shall include a mix of compatible and complementary commercial and residential uses, and shall comply with the provisions set forth in Section 30-24(f); | Deleted “and” |
| 2(d) If the PMDBs mix of commercial and residential uses share parking facilities, the provisions of Section 30-19(d) shall apply, | 2(d) If the PMDBs mix of commercial and residential uses share parking facilities, the provisions of Section 30-19(d) shall apply, | .”except” instead of “provided” and added “stalls.” |

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| provided that in no event shall the required parking for residential units be less than 1.25 per dwelling unit. | except that in no event shall the required parking for residential units be less than 1.25 stalls per dwelling unit. | |
| | 2(e) No off-street parking shall be provided in the front setback of retail, office, or commercial buildings. | Added requirement. Note that “setbacks” exist only at the perimeter of the Development Parcel. |
| 3) <i>Additional Special Permit Findings for a Planned Multi-Use Business Development</i> In addition to those criteria set forth in Section 30-23(c)(2) and in Section 30-24(d), the Board of Aldermen shall consider the application for a Planned Multi-Use Business Development in light of the following criteria: | None. | |
| 3(a) <i>Adequacy of public facilities.</i> Transportation, utilities, public safety, schools including capacity, and other public facilities and infrastructure serve the PMBD appropriately and safely without material deterioration in service to other nearby locations; | 3(a) <i>Adequacy of public facilities.</i> Transportation, utilities, public safety, schools including capacity, and other public facilities and infrastructure serve the PMBD appropriately and safely without material deterioration in service to other nearby locations. A finding of adequacy of transportation shall require, among other things, demonstration that each of the following guidelines is being met unless because of unusual circumstances the Board of Aldermen find that for reasons specific to that location or that development a departure | New language giving guidance regarding the meaning of “adequacy,” but retaining Aldermanic discretion. |

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| | <p>from one or more of the guidelines better serves the public interest.</p> <ul style="list-style-type: none"> • Projected on-street vehicle trip avoidance through such means as <ul style="list-style-type: none"> – internal trips “captured;” – access by public transport, ride-sharing, walking, or biking; – participation in a transportation management organization; <p>or other transportation management efforts will equal not less than 20% of the otherwise projected peak hour weekday and weekend totals, unless it is demonstrated to the satisfaction of the Board of Aldermen that achieving a 20% level of avoidance is infeasible despite good-faith efforts.</p> <ul style="list-style-type: none"> • The projected total number of vehicle trips generated by development in the PMBD at build-out will not exceed the following rates per 1,000 square feet of development parcel area, adjusting for internal trips and transit trips but without adjusting for pass-by trips: | <p>In the November 15, 2006 Chestnut Hill <i>FEIR</i> submittal (pp IV-8 and IV-9) the applicants credit a 5% reduction for internal trips captured and a 10% peak hour reduction for public transport usage. MEPA and EOTC have apparently accepted those estimates, but Newton might want further dialog regarding them.</p> <p>Per the <i>Chestnut Hill FEIR</i>, the proposed development could, with modest additional effort or even just pencil-sharpening, meet these figures. A project of the same size but proposing more commercial floor area and less</p> |

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| | <ul style="list-style-type: none"> – Weekday PM peak hour 2.3 – Saturday noon peak hour 2.7 – Weekday average daily 23.0 – Saturday average daily 33.0. <ul style="list-style-type: none"> • Delay, queue length, and volume/capacity ratios shall be projected to be no worse than under no-build conditions on any impacted road. • The overall traffic level of service shall be no lower than D for any intersection substantially impacted by PMBD traffic. | <p>for housing on the same site or the same mix on a smaller site could not meet these figures unless the applicant documented larger-scale trip reductions than claimed in the <i>FEIR</i>.</p> <p>This requirement exists for EIRs under an EOTC/EOEA agreement of July, 1989 apparently still in effect. Stating it here enables the City to enforce it.</p> <p>The Chestnut Hill Square <i>FEIR</i> appears to indicate that this guideline is met by the present design, although the format of the <i>FEIR</i> precluded our readily corroborating that.</p> |
| <p>3(b) <i>Mitigation of neighborhood impacts.</i> Mitigation measures have been included to address any material adverse impacts from the PMBD on nearby neighborhoods during construction and, after construction, on traffic, parking, noise, lighting, blocked views, and other impacts associated with the PMBD.</p> | None except the addition below. | |
| | Mitigations may take the form of transit | Expanded description of the |

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| | improvements, improved access to transit, traffic-calming, or other roadway changes. If so provided in the special permit decision, the applicant may make payment to the City or other public agency in lieu of implementing specified mitigating actions where that is more beneficial to the outcome than would be any feasible efforts by the applicant. | intent of the earlier language, and making explicit that payments may substitute for developer implementation in some cases. |
| <p><i>3(c) Housing, public transportation and traffic and parking improvements, and utility infrastructure enhancements.</i></p> <p>The PMBD offers long term public benefits to the City and nearby neighborhoods such as affordable housing, substantial parking, public safety, traffic and roadway enhancements, improved access and enhancements to public transportation, and water and sewer infrastructure enhancements;</p> | <p><i>3(c) Housing, public transportation, traffic, parking improvements, and utility infrastructure enhancements.</i></p> <p>The PMBD offers long term public benefits to the City and nearby neighborhoods such as:</p> <ul style="list-style-type: none"> i) affordable housing opportunities, at minimum satisfying the City's Inclusionary Housing Ordinance (Section 30-24(f)); ii) water and sewer infrastructure enhancements; iii) public safety improvements; iv) substantial enhancements to parking, traffic; and roadways, consistent with promoting responsible transportation; v) substantial improvements to on- and off-site pedestrian and bicycle facilities, particularly as | Expansion for clarity. |

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| | <p>they promote access to the site;</p> <p>vi) improved access and enhancements to public transportation.</p> <p>3(d) The applicant must objectively document the impacts on the pedestrian environment and the neighborhood quality of life resulting from any proposed:</p> <ul style="list-style-type: none"> - addition of roadway travel or turning lanes or conversion of on-street parking to travel lanes; - increase in length of curb radii; - removal of pedestrian crossings or bicycle lanes; - traffic signal additions or alterations, or - relocation or alterations to public transport access points. <p>The applicant must document why any of those measures that have negative impacts are not avoidable through other means such as the trip avoidance actions cited above.</p> | <p>Note creation of a new subsection number here, requiring changes (made) to all subparagraphs of C below. The language from here to the end of 3d) is critical to the City's ability to assure that development is not inconsistent with the capacity of the transportation system as we want it to be, rather than that system being reshaped to fit development proposals.</p> |
| <p>3(d) <i>Compatibility and integration with its surroundings.</i> The PMBD scale, density, and mix of commercial and residential uses have been designed to be compatible with the character and</p> | <p>3(e) <i>Compatibility and integration with its surroundings.</i> The PMBD scale, density, layout, and mix of commercial and residential uses have been designed to be compatible with the character and</p> | <p>Expansion to clarify original intent.</p> |

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| <p>land uses in the surrounding neighborhoods, and the PMBD appropriately integrates building height, streetscape character, and overall project PMBD design, as well as provides appropriate setbacks and buffering and screening from nearby properties, especially residential ones, as well as assurance of appropriate street or ground level commercial uses.</p> | <p>land uses in and integrated when appropriate with surrounding neighborhoods. Considerations include:</p> <ul style="list-style-type: none"> i) Neighborhood access to the site, particularly to open spaces provided pursuant to section 3(h) and the commercial center(s) created pursuant to section 3(l) ii) Neighborhood access to on-site transit; iii) Circulation through the site; iv) The extent to which the proposed development will reduce vehicle trips in surrounding neighborhoods by providing pedestrian-accessible amenities; v) The extent to which the streetscape is consistent and compatible in terms of front setbacks, building height, and building design; vi) Extent of street-level commercial uses; vii) Orientation and connection to existing or planned transit; and viii) Overall project design. | |

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| | <p>Consistent with the overall objective of integration, the PMBD will also provide appropriate setbacks and buffering and screening from the nearby properties, especially residential ones, where necessary.</p> <p>The integration requirements of this paragraph shall apply to the various elements of the PMBD in relation to each other as well as to the PMBD and in relation to its neighbors.</p> | |
| <p>3(f) <i>Not inconsistent with applicable local plans or general laws.</i> The PMBD is not inconsistent with the City's Comprehensive Plan in effect at the time of filing an application for a Planned Multi-Use Business Development, and applicable general laws relating to zoning and land use;</p> | Renumbered from 3(e) | |
| <p>3(f) <i>Improved access nearby.</i> Pedestrian and vehicular access routes and driveway widths, which shall be determined by the Board of Aldermen, are appropriately designed between the PMBD and abutting parcels and streets, with consideration to streetscape continuity and an intent to avoid adverse impacts on nearby neighborhoods from such traffic and other activities generated by the PMBD as well as to improve traffic and access</p> | <p>3(g) <i>Improved access nearby.</i> Pedestrian and vehicular access routes and driveway widths between the PMBD and abutting parcels and streets are appropriately designed. Factors for consideration include the extent to which the PMBD:</p> <ul style="list-style-type: none"> i) Maintains or extends the roadway network; ii) Maintains the existing streetscape character; | Expansion for clarity. |

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| in nearby neighborhoods; | <p>iii) Improves traffic in nearby neighborhoods;</p> <p>iv) Creates pedestrian and vehicular connections between the neighborhood and the PMBD where appropriate without facilitating traffic from further away crossing through residential neighborhoods;</p> <p>v) Avoids adverse impacts on nearby neighborhoods from traffic and other activity generated by the PMBD;</p> | |
| <p>3(g) <i>Enhanced open space.</i> Appropriate setbacks as well as buffering and screening are provided from nearby residential properties; the quality and access of beneficial open space and on-site recreation opportunities is appropriate for the number of residents, employees and customers of the PMBD; and the extent of the conservation of natural features on-site, if any;</p> | <p>3(h) <i>Enhanced open space.</i> The amount of, quality of, and access to beneficial open space and on-site recreation opportunities is appropriate for the number of residents, employees and customers of the PMBD. Considerations include:</p> <p>i) The extent to which the open space supports a variety of uses, including, but not limited to, walking, bicycling, and other active or passive recreation;</p> <p>ii) The extent to which the open space will be accessible to the public for reasonable periods throughout the day;</p> | Expanded for clarity. |

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| | <p>iii) The extent to which the open space is integrated and compatible with the residential and commercial uses in the PMBD;</p> <p>iv) The extent to which open space contributes to integration with surrounding neighborhoods or provides setback, buffering, and screening, where appropriate;</p> <p>v) The mix of large- and small-scale open space;</p> <p>vi) The continuity of open space or connections between open spaces;</p> <p>vii) The petitioner's agreement to maintain the open space for public use as originally designed and approved in the development's site plan;</p> <p>viii) The extent of the conservation of natural features on-site, if any.</p> <p>In addition, the PMBD must satisfy the open space requirement in Table A.</p> | |
| <p>3(h) <i>Excellence in place-making.</i> The PMBD provides a design of exceptional architectural quality so as to enhance the visual quality of the site in comparison both to its current uses as well as its surroundings; and</p> | <p>3(i) <i>Excellence in place-making.</i> The PMBD provides a design of exceptional architectural quality so as to enhance the visual and civic quality of the site and the overall experience for residents of and visitors to both</p> | <p>Rewording.</p> |

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| | the PMBD and its surroundings. | |
| <p>3(j) <i>Comprehensive signage program.</i> All signage for a PMBD shall be in accordance with a comprehensive signage program developed by the applicant and approved by the Board of Aldermen, and not inconsistent with the architectural quality of the PMBD or character of the streetscape.</p> | Renumbered only. | |
| | <p>3(j) <i>Pedestrian scale</i> The PMBD should be pedestrian-scaled. Factors for consideration include whether:</p> <ul style="list-style-type: none"> i) Building footprints and articulations are appropriately scaled to encourage outdoor pedestrian circulation; ii) There are appropriate provisions for crossing all driveway entrances and internal roadways. iii) There is appropriate pedestrian access to and through the Development Parcel; iv) Buildings abutting any sidewalk or walkway have doorways frequently enough to avoid creation of a continuous impenetrable façade. | <p>Added language amplifying intentions embodied in other more general provisions elsewhere.</p> |
| | <p>3(l) <i>Public Space</i> The PMBD, unless unusual circumstances</p> | <p>Added language amplifying intentions embodied in other</p> |

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| | <p>dictate otherwise, creates one or more focal public spaces as pedestrian oriented destinations that accommodate a variety of uses. Factors for consideration include:</p> <ul style="list-style-type: none"> i) The number and variety of uses in the public space(s); ii) The extent to which the public space(s) promote vibrant street life; iii) The extent to which the public space(s) promote activity at various times of the day; iv) The connection of the public space(s) to the surrounding neighborhood, to the residential components of the PMBD, to other commercial activity, and to each other; v) Whether motor vehicles are excluded from or limited in the public space(s). | more general provisions elsewhere. |
| | <p>3(m) <i>Sustainable Design</i> The PMBD will at least meet the energy and sustainability provisions of Zoning Sections 30-24(d)(5), Section 30-24(g), and 30-23(c)(2)(h).</p> | |
| <p>4) <i>Lots</i> In the application of the requirements of this</p> | None. | |

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| <p>Ordinance to a Planned Multi-Use Business Development, the same shall not be applied to the individual lots or ownership units comprising a Development Parcel, but shall be applied as if the Development Parcel were a single conforming lot, whether or not the Development Parcel is in single- or multiple-ownership; provided, however, that violation of this Ordinance by an owner or occupant of a single lot or ownership unit or leased premises within a PMBD shall not be deemed to be a violation by any other owner or occupant within the PMBD provided there exists an appropriate organization of owners as described in subsection 5) below.</p> | | |
| <p><i>5) Organization of Owners</i> Prior to exercise of a special permit granted under this section, there shall be formed an organization of all owners of land within the development with the authority and obligation to act on their behalf in contact with the City or its representatives. Such organization shall serve as the liaison between the City and any lot owner, lessee, or licensee within the PMBD which may be in violation of the City's Zoning Ordinance, shall be the primary contact for the City in connection with any dispute regarding violations of this Ordinance and, in addition to any joint</p> | None. | |

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| and several liability of individual owners, shall have legal responsibility for the PMBD's compliance with the terms of its special permit and site plan approval granted hereunder and with this Ordinance. In addition, the special permit shall provide for the establishment of an advisory council consisting of representatives of the neighborhoods and this organization to assure continued compatibility of the uses within the PMBD and its neighbors during and after construction. | | |
| <p>6) <i>Phasing</i> Any Planned Multi-Use Business Development may be built in multiple phases over a period of time, in accordance with the terms of the special permit granted provided that all improvements and enhancements to public roadways and other amenities are provided contemporaneously with or in advance of such initial construction. The phasing schedule for the PMBD shall be as set forth in the special permit.</p> | <p>6) <i>Phasing</i> Any development within a PMBD may be built in multiple phases over a period of time in accordance with the terms of the special permit granted provided that all improvements and enhancements to public transit or public roadways and other amenities are provided contemporaneously with or in advance of occupancy permits for elements of the development that are reliant upon those improvements for access adequacy. The phasing schedule for the PMBD shall be as set forth in the special permit.</p> | Added specificity. |
| <p>7) <i>Post-Construction Traffic Study</i> A Planned Multi-Use Business Development special permit shall provide:</p> | <p>7) <i>Post-Construction Traffic Study</i> A PMBD special permit shall provide for monitoring to determine consistency between the projected and actually experienced number</p> | |

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| | of daily and hourly vehicle trips to and from the site and their distribution onto abutting roads. The special permit shall require a bond or other security satisfactory to the Director of Planning and Development, in an amount approved by the Board of Aldermen in acting on the special permit, to secure performance as specified below. | Expansion for clarity. |
| 7(a) Trips generated by the PMBD site, measured at site driveways, prior to the construction of the PMBD; | 7(a) Monitoring of vehicle trips for this purpose shall begin not earlier than twelve months following the granting of a final certificate of occupancy, and shall continue periodically over the following twelve months. Measurements shall be made at all driveway accesses to the PMBD. | Expansion for specificity. |
| 7(b) Trips projected by a professional traffic engineering firm to be generated by and distributed to the PMBD site by the PMBD; and | 7(b) The baseline shall be the projected daily and peak hour vehicle trips to and from the PMBD site at full occupancy and their distribution onto abutting roads. The baseline figures shall be those relied upon by the Board of Aldermen in acting on the special permit, having considered the figures determined by the Director of Planning and Development following submittals by the applicant's professional engineering firm and following staff and consultant peer review of those figures. | Expansion for clarity. |
| 7(c) Trips actually generated by and distributed | 7(c) The experienced actual number of vehicle | Expansion for clarity. |

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| to the PMBD one year after a certificate of occupancy is granted, with limitation to impacts caused by PMBD, as measured through an independent trip generation and distribution analysis, to be paid for by the developer or successor interest but conducted or overseen by the City. | trips to and from the PMBD and their distribution onto abutting roads shall be measured by a traffic engineering firm approved by the City and retained by the applicant or successor in interest. If full occupancy has not been reached at the time of the measurement being made, the observed figures shall be expanded to reflect no more vacancy than was anticipated in the materials upon which the special permit was approved. | |
| 7(d) To the extent that (c) exceeds (b) by ten per cent, as measured on a periodic basis over the course of a calendar year, the then owner of the Planned Multi-Use Business Development site shall begin mitigation measures within six months, satisfactory to the Director of Planning and Development and the City Traffic Engineer, to reduce the trip generation variance and the trip distribution variance on roadways as specified by the Director of Planning and Development and the City Traffic Engineer to a level within ten percent of (b) within twelve months after the mitigation is begun. The City's remedy for failure to achieve such a reduction within one year after the analysis described in (c) is completed shall require forfeit of a bond or other security mechanism in an amount to be determined by the Board of Aldermen and | 7(d) If the actually experienced number of vehicle trips measured per 7(c) exceeds the baseline number projected per 7(b) by more than ten per cent, mitigation measures are required. Within six months of notification to do so, the then owner of the PMBD site shall begin mitigation measures in order to reduce the trip generation variance and the trip distribution variance to less than ten percent, to be achieved within twelve months after the mitigation is begun. Prior to implementation those mitigation efforts must have been approved as being satisfactory to the Director of Planning and Development following consultation with the City Traffic Engineer Upon failure by the owner to achieve the required variance reduction within one year after | Some revision, some expansion for clarity. |

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| included as a condition of the special permit, which funds shall be used for traffic mitigation by the City. | notification of an excessive variance the bond or other security cited above may be taken as damages. | |
| 8) <i>Modifications</i> Any material modification to a PMBD shall require Site Plan Approval by the Board of Aldermen in accordance with Section 30-23. The following provisions shall apply with respect to any proposed modification of a PMBD: | None. | |
| 8(a) A change of use, provided such change is to another use approved in the special permit, or relocation of an approved use within the PMBD shall not require additional approvals under this Ordinance if the total Gross Floor Area within the PMBD devoted to such use does not increase by more than five percent (5%) in the aggregate; | None. | |
| 8(b) A change of use that results in a lower net parking requirement for the PMBD (pursuant to Section 30-19) shall not require additional approvals under this Ordinance; and | None. | |
| 8(c) A change of use or an increase in the floor area or unit count, as applicable, of a use within the PMBD shall require Site Plan Approval by the Board of Aldermen in accordance with Section 30-23 unless the applicant demonstrates that the total traffic generation of the PMBD, | None. | |

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| with the proposed change, will not exceed the total traffic generation of the PMBD set forth in the applicant's pre-development traffic study. | | |
| 8(d) Except as provided above, any reduction in beneficial open space shall require additional approvals under this Ordinance. | None. | |
| 8(e) Any condition identified by the Board of Aldermen in the special permit as not subject to modification without additional approval shall require additional approvals under this ordinance. | Typo fix Alderman to Aldermen. | |
| 9) <i>Applicability</i> Buildings, structures, lots and uses within or associated with a PMBD shall be governed by the applicable regulations for the Business 4 District, except as modified by the provisions of this section 30-15(s). Where provisions of this Ordinance conflict or are inconsistent with the provisions of this section 30-15(s), the provisions of this section 30-15(s) shall govern. | None. | |
| 10) <i>Additional Filing Requirements for PMBDs.</i> In addition to the provisions of Section 30-23 and 30-24, general application requirements for grant of a special permit for a PMBD are as follows. Applicants must submit in hard copy and by electronic submission (e-filing), unless the applicant demonstrates to the satisfaction of | 10) <i>Additional Filing Requirements for PMBDs.</i> In addition to the provisions of Section 30-23 and 30-24, general application requirements for grant of a special permit for a PMBD are as follows. Applicants must submit in hard copy and by electronic submission (e-filing) compliant with the Mass GIS "Standard for | Adds reference to the standard that EOEEA is strongly encouraging as THE standard. |

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| the Director of Planning and Development that electronic submission is not feasible: | Digital Plan Submittal to Municipalities” unless the applicant demonstrates to the satisfaction of the Director of Planning and Development that electronic submission or compliance with that standard is not feasible: | |
| 10(a) Scaled massing model or 3D computer model; | None. | |
| 10(b) Narrative analysis describing design features intended to integrate the proposed PMBD into the surrounding neighborhood, including the existing landscape, abutting commercial and residential character and other site specific considerations, as well as an explanation of how the proposed PMBD satisfies each criterion in this section; | None. | |
| 10(c) Statement describing how the beneficial open space areas, to the extent open to the public, are intended to be used by the public; | None. | |
| 10(d) Site plans showing any "by-right" or special permit alternatives within the current zoning district prior to any site specific rezoning or special permit hereunder; | None. | |
| | 10(e) A Roadway and Transportation Plan reflecting the “EOEA Guidelines for EIR/EIS Traffic Impact Assessment” with further attention to public transportation and exceptions as may be approved by the Director of Planning | Addition for clarity. |

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| | <p>& Development. The Plan shall include the following.</p> <p>i) Graphic and narrative description of existing and proposed means of access to and within the site, including motor vehicular, pedestrian, bicycle, and public or private transportation alternatives to single-occupant vehicles.</p> <p>ii) Description of a proposed transportation demand management (TDM) program identifying commitments, if any, to a designated TDM manager, employer contributions to employee public transportation passes, shuttle bus capital contribution, car pool, van pool, guaranteed ride home, flex hours, promotional programs, support for off-site pedestrian and bicycle accommodations, and similar efforts;</p> <p>iii) The anticipated vehicle trip generation reductions resulting from internally captured dual-purpose trips, the TDM program and the means of making change if these reductions are not realized.</p> <p>iv) Detailed analysis and explanation for the maximum peak hour and daily motor vehicle trips projected to be generated by the</p> | |

| Planning & Development Department 9/24/07 Hearing Version | Suggested departures | Notes |
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| | <p>Development Parcel;</p> <p>v) Analysis of traffic impacts on surrounding roadways, including secondary roads on which traffic to the Development Parcel may have a negative impact. Results are to be summarized in tabular form to facilitate understanding of change from baseline conditions to the buildout conditions in trip volumes, volume/capacity ratios, level of service, delays, and queues.</p> <p>vi) The assumptions used with regard to the proportion of automobile use for travel related to the site, the scale of development and the proposed mix of uses, and the amount of parking provided.</p> <p>vii) Analysis of projected transit use and description of proposed improvements in transit access, frequency, and quality of service.</p> | |
| 10(e) Area plan showing distances from proposed buildings or structures on abutting parcels or parcels across public ways, along with information on the heights and number of stories of these buildings and any buildings used for the purposes calculating of a height bonus; and | None. | |
| 10(f) Proposed phasing schedule, including infrastructure improvements. | None. | |

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| | 10(g) Shadow study showing shadow impacts on the surroundings for four seasons at early morning, noon, and late afternoon. | Added requirement. |
| <p><i>Section 30-1</i> Section 30-1 is amended by adding the following two definitions: <i>Open Space, Beneficial:</i> Areas not covered by buildings or structures, which shall specifically include, but are not limited to: landscaped areas; playgrounds; walkways; plazas, patios, terraces and other hardscaped areas; and recreational areas, and shall not include: (i) portions of walkways intended primarily for circulation, i.e., that do not incorporate landscape features, sculpture or artwork, public benches, bicycle racks, kiosks or other public amenities, or (ii) surface parking facilities, or (iii) areas that are accessory to a single housing unit or (iv) areas that are accessory to a single commercial tenant, and controlled by the tenant thereof, and not made available to the general public. In calculations of the amount of beneficial open space provided, an offset of ten (10) per cent of the otherwise applicable square footage requirements shall be made for the provision of well maintained publicly available green planted areas.</p> | None. | |

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| <p><i>Development Parcel:</i> The real property on which a Planned Multi-Use Business Development is located, as shown on a Planned Multi-Use Business Development Plan approved by the Board of Aldermen in connection with a special permit under Section 30-15(s).</p> <p><i>Height, Contextual:</i> The vertical distance between the elevations of the following: (a) the Newton Base Elevation utilized by the City as implemented by the Engineering Division and (b) the mid-point between the highest point of the ridge of the roof and the line formed by the intersection of the wall plane and the roof plane. Not included in such measurements are 1) cornices which do not extend more than five (5) feet above the roof line; 2) chimneys, vents, ventilators and enclosures for machinery of elevators which do not exceed fifteen (15) feet in height above the roof line; 3) enclosures for tanks which do not exceed twenty (20) feet in height above the roof line and do not exceed in aggregate area ten (10) per cent of the area of the roof; and 4) towers, spires, domes and ornamental features.</p> | | |
| <p><i>Section 30-11(d)</i> Section 30-11(d) is amended by renumbering subparagraph (12) as (13) and adding the</p> | None. | |

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| following as new subparagraph (12): "In Business District 4, a Planned Multi-Use Business Development;" | | |
| <i>Section 30-11(i)</i> Section 30-11(i) is amended by renumbering subparagraph (7) as (8) and adding the following as new subparagraph (7): "A Planned Multi-Use Business Development;" | None. | |

Table A.

DENSITY AND DIMENSIONAL REQUIREMENTS FOR PLANNED MIXED BUSINESS DEVELOPMENT

The following rather than the provisions of Table 3 in Section 30-15 shall apply to development under a PMBD special permit.

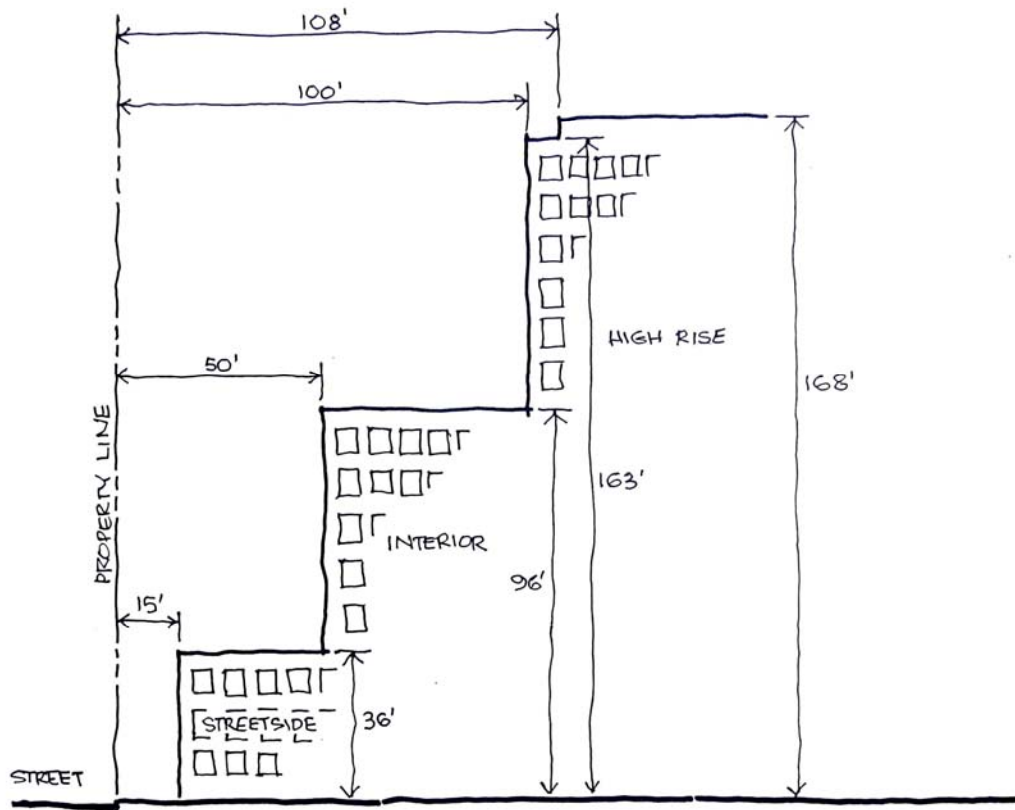
As noted at Section 30-15(s)4) *Lots*, these requirements apply to the Development Parcel as a whole rather than to any individual lots within it.

| Area, frontage, and bulk | All development |
|---------------------------------|-----------------|
| Minimum lot area | 10 acres |
| Minimum lot frontage | 100 ft. |
| Max. total floor area ratio | 3.0 |
| Min. lot area per dwelling unit | 1,200 sq. ft. |
| Maximum lot coverage | n/a |
| Min. beneficial open space | 20% |

| Height and setbacks (8) | Streetside façade | Interior development | High rise development |
|-------------------------|--|--|-----------------------|
| Height (feet) | 36 ft. | 96 ft. | 96 ft. (2), (3) |
| Height (stories) | 4 | 8 | 8 (1) |
| Front setback (7) | Lesser of 15 ft. or 1/2 building height (4) | Greater of 50 ft. or 1/2 building height | 100 ft. |
| Side setback (7) | Greater of 15 ft. or 1/2 building height (5) | | 50 ft. (6) |
| Rear setback (7) | | | 100 ft. (6) |

NOTES

- (1) Number of stories may be increased up to a maximum of 14 stories, subject to grant of a special permit by the Board of Aldermen and subject to such height and setback limits as established in footnotes 2 and 3.
- (2) The Board of Aldermen may grant a special permit to allow building height may be increased up to a maximum of 168 ft., excluding customary rooftop elements, provided the building is placed a minimum of 100 ft. from the front and rear lot lines and provided that the building does not exceed one (1) foot of excess building height for each 1.5 ft. of separation measured from the front lot line or the rear lot line, whichever is less.
- (3) Any increase in building height requested pursuant to footnote 2 may not result in the proposed building at any point exceeding the contextual height of the tallest building located within 2,000 ft. of the Development Parcel.
- (4) The Board of Aldermen may grant a special permit to allow the front setback to be decreased from 15 ft. to the average setback in the immediate area, which shall be the average of the setbacks of the buildings nearest thereto on either side of the Development Parcel. A vacant lot shall be counted as though occupied by a building set back fifteen (15) feet from the front setback.
- (5) Side and/or rear setbacks shall be a minimum of 20 ft. or 1/2 building height if larger when such setback abuts any Single Residence District or Multi-Residence District or Public Use District.
- (6) Side and/or rear setbacks of non-residential uses shall be a minimum of 100 ft. when such setback abuts any Single Residence District or Multi-Residence District or Public Use District.
- (7) The front, side, and rear setback requirements for parking facility shall not be less than five (5) feet, or shall not be less than fifteen (15) feet when such setback abuts a Single Residential District or Multi-Residential or Public Use District.
- (8) Building height and setbacks shall be measured separately for each building on the site and shall be measured separately for each part of a building which (a) is an architecturally distinctive element, and (b) is setback from the façade of an adjoining lower building element at least twenty (20) feet, and c) for which there is a change in height of at least one story. Setbacks for non-building structures shall be determined by the Board of Aldermen.



ILLUSTRATIVE SKETCH: SETBACKS AND HEIGHTS

MEMORANDUM

To: Michael J. Kruse, Director
DEPARTMENT OF PLANNING AND DEVELOPMENT

CC: Phil Herr
Juris Alksnitis
Planning and Development Board Members

From: Planning and Development Board

Date: October 18, 2007

Re: Petition 66-07(2)—PMBD

The Planning and Development Board is excited about this opportunity to partner with the Department to assist in finalizing the best ordinance draft possible for presentment. As such, we have done our best to submit helpful comments in connection with what we understand to be a work in progress informally set for next distribution on Friday (10/19/07), for final submission to ZAP on Monday evening (10/22/07). We hope the Department will continue to include the Board in the distribution updated draft versions as we intend to participate in the ZAP meeting Monday night and be as helpful to the Department as possible.

To that end, our first comment is to applaud the Department for its substantial efforts to move forward with draft proposals that incorporate the language and spirit of the draft Comprehensive Development Plan ("CDP") wherever applicable. We think that is a key component to making the present ordinance proposal the most successful and sustainable as we eventually move into a post-CDP City. With that in mind we are particularly delighted to see the present references to building height restrictions which comport with the reality that only a very limited number of places could be affected, but which allow for appropriate development in such places while at the same time prohibiting it in places we would not want taller structures.

Again, the Department's harmonizing its ordinance proposal with the draft CDP with respect to Limiting Business Development to Commercial Corridors; Performance Based Rules; Improved Review Processes; and, Mixed Use are key hallmarks which will provide for meaningful and well planned development moving forward, and we applaud the Department's references thereto.

In that vein, the Board suggests that the Department also consider further development of the following issues in its draft ordinance which reflect additional key hallmarks of the draft CDP which appear to be absent from the most recent version of the draft ordinance we have been provided.

- 1) A reasonable commitment to timely study parking maximum requirements to determine whether or to what extent and how they would be appropriate. We would envision that such study should also be conducted for application outside of PMBD's;
- 2) Responsible Transportation initiatives as identified in §3(c);

- 3) Definitions and descriptions of Open Space as identified in §3(g); and,
- 4) A reasonable commitment to timely study and implementation of changes to parking requirements in connection with FAR calculations so as to incentivize the creation of underground rather than surface parking by excluding underground parking figures from the FAR formula.

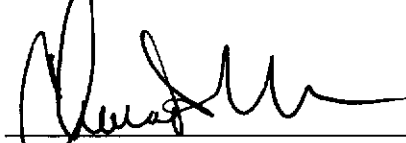
Lastly, we would also take this opportunity to respectfully urge the Department to make a reasonable commitment to ensure a timely comprehensive review and amendment process for the ordinance once the final CDP is ultimately adopted to provide for ongoing harmony between the two given that where there could be a conflict, the ordinance would likely control.

In closing, the Board would like to thank the Department for this opportunity to provide meaningful assistance and partnership in the facilitation of an ordinance that can move forward for adoption in a timely and successful manner. We look forward to the chance to review the Department's next draft and to working together to provide meaningful commentary and support at the ZAP meeting Monday evening.

DATED: October 18, 2007

Respectfully submitted,

on behalf of the Board,

A handwritten signature in black ink, appearing to read 'Charles P. Wagner', written over a horizontal line.

Charles P. Wagner, Alternate Member

*October 19, 2007 Updated Draft Planned Multi-Use Business Development Ordinance
Recommended by the Planning Department*

| Planning & Development Department 9/24/07 Hearing Version | Planning & Development Department October 19, 2007 Updated Version With Changes Noted |
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| <p>Section 30-15(s) Planned Multi-Use Business Development ("PMBD"). In any Business 4 District, the Board of Aldermen may give site plan approval in accordance with the procedures provided in Section 30-23, and may grant a special permit in accordance with the procedures provided in Section 30-24, for the applicable density and dimensional controls set out in Table A of this subsection for a Planned Multi-Use Business Development and the associated conditions set out below.</p> | <p>None.</p> |
| <p>1) <i>Purpose:</i> A Planned Multi-Use Business Development is one which allows development appropriate to the site and its surroundings that provides enhancements to infrastructure, protection of nearby neighborhoods, and a mix of compatible and complementary commercial and residential uses appropriate for sites located on commercial corridors, and is not inconsistent with the City's Comprehensive Plan in effect at the time of filing an application for a Planned Multi-Use Business Development.</p> | <p>None.</p> |

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Recommended by the Planning Department*

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| 2) <i>Minimum Criteria for Planned Multi-Use Business Developments</i> In order to be eligible for any approval under this Section, a PMBD must meet the following threshold criteria: | None. |
| 2(a) The Development Parcel shall be located in a Business 4 District; | 2(a) The Development Parcel shall be located in a Business 4 District, and have frontage on a Major Arterial or Minor Arterial, as classified by the City of Newton. |
| 2(b) The PMBD shall comply with the applicable minimum and maximum density and dimensional controls set out in Table A of this subsection; | 2(b) The PMBD shall comply with the applicable minimum and maximum density and dimensional controls set out in Table A of this subsection, rather than to those of Section 30-15 Table 3; |
| 2(c) The PMBD shall include a mix of compatible and complementary commercial and residential uses and shall comply with the provisions set forth in Section 30-24(f); and | 2(c) The PMBD shall include a mix of compatible and complementary commercial and residential uses, and shall comply with the provisions set forth in Section 30-24(f); |
| 2(d) If the PMDBs mix of commercial and residential uses share parking facilities, the provisions of Section 30-19(d) shall apply, provided that in no event shall the required parking for residential units be less than 1.25 per dwelling unit. | 2(d) If the PMDBs mix of commercial and residential uses share parking facilities, the provisions of Section 30-19(d) shall apply, except that in no event shall the required parking for residential units be less than 1.25 stalls per dwelling unit. |
| | 2(e) No off-street parking shall be provided in the front setback of retail, office, or commercial buildings. |

*October 19, 2007 Updated Draft Planned Multi-Use Business Development Ordinance
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| <p>3) <i>Additional Special Permit Findings for a Planned Multi-Use Business Development</i> In addition to those criteria set forth in Section 30-23(c)(2) and in Section 30-24(d), the Board of Aldermen shall consider the application for a Planned Multi-Use Business Development in light of the following criteria:</p> | None. |
| <p>3(a) <i>Adequacy of public facilities.</i> Transportation, utilities, public safety, schools including capacity, and other public facilities and infrastructure serve the PMBD appropriately and safely without material deterioration in service to other nearby locations;</p> | None. |
| <p>3(b) <i>Mitigation of neighborhood impacts.</i> Mitigation measures have been included to address any material adverse impacts from the PMBD on nearby neighborhoods during construction and, after construction, on traffic, parking, noise, lighting, blocked views, and other impacts associated with the PMBD.</p> | None except the addition below. |
| | Mitigations may take the form of transit improvements, improved access to transit, traffic-calming, or other roadway changes. |
| <p>3(c) <i>Housing, public transportation and traffic and parking improvements, and utility infrastructure enhancements.</i> The PMBD offers long term public benefits to the City and nearby neighborhoods such as affordable housing, substantial parking, public safety, traffic and roadway enhancements, improved access and enhancements to public transportation, and water and sewer infrastructure enhancements;</p> | None. |

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| <p>3(d) <i>Compatibility and integration with its surroundings.</i> The PMBD scale, density, and mix of commercial and residential uses have been designed to be compatible with the character and land uses in the surrounding neighborhoods, and the PMBD appropriately integrates building height, streetscape character, and overall project PMBD design, as well as provides appropriate setbacks and buffering and screening from nearby properties, especially residential ones, as well as assurance of appropriate street or ground level commercial uses.</p> | None except the addition below. |
| | The integration requirements of this paragraph shall apply to the various elements of the PMBD in relation to each other as well as to the PMBD and in relation to its neighbors. |
| <p>3(e) <i>Not inconsistent with applicable local plans or general laws.</i> The PMBD is not inconsistent with the City's Comprehensive Plan in effect at the time of filing an application for a Planned Multi-Use Business Development, and applicable general laws relating to zoning and land use;</p> | None. |
| <p>3(f) <i>Improved access nearby.</i> Pedestrian and vehicular access routes and driveway widths, which shall be determined by the Board of Aldermen, are appropriately designed between the PMBD and abutting parcels and streets, with consideration to streetscape continuity and an intent to avoid adverse impacts on nearby neighborhoods from such traffic and other activities generated by the PMBD as well as to improve traffic and access in nearby neighborhoods;</p> | None. |

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| <p>3(g) <i>Enhanced open space.</i> Appropriate setbacks as well as buffering and screening are provided from nearby residential properties; the quality and access of beneficial open space and on-site recreation opportunities is appropriate for the number of residents, employees and customers of the PMBD; and the extent of the conservation of natural features on-site, if any;</p> | <p>None except the addition below.</p> |
| | <p>In addition, the PMBD must satisfy the open space requirement in Table A.</p> |
| <p>3(h) <i>Excellence in place-making.</i> The PMBD provides a design of exceptional architectural quality so as to enhance the visual quality of the site in comparison both to its current uses as well as its surroundings; and</p> | <p>3(i) <i>Excellence in place-making.</i> The PMBD provides a high quality architectural design so as to enhance the visual and civic quality of the site and the overall experience for residents of and visitors to both the PMBD and its surroundings.</p> |
| <p>3(i) <i>Comprehensive signage program.</i> All signage for a PMBD shall be in accordance with a comprehensive signage program developed by the applicant and approved by the Board of Aldermen, and not inconsistent with the architectural quality of the PMBD or character of the streetscape.</p> | <p>None.</p> |
| | <p>3(j) <i>Pedestrian scale.</i> The PMBD provides building footprints and articulations appropriately scaled to encourage outdoor pedestrian circulation, includes appropriate provisions for crossing all driveway entrances and internal roadways, and allows appropriate pedestrian access to and through the Development Parcel.</p> |

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| | <p>3(k) <i>Public Space</i> The PMBD creates public spaces as pedestrian oriented destinations that accommodate a variety of uses and promote a vibrant street life making connections to the surrounding neighborhood, as well as to the commercial and residential components of the PMBD, to other commercial activity, and to each other.</p> |
| | <p>3(l) <i>Sustainable Design</i> The PMBD will at least meet the energy and sustainability provisions of Zoning Sections 30-24(d)(5), Section 30-24(g), and 30-23(c)(2)(h).</p> |
| <p>4) <i>Lots</i> In the application of the requirements of this Ordinance to a Planned Multi-Use Business Development, the same shall not be applied to the individual lots or ownership units comprising a Development Parcel, but shall be applied as if the Development Parcel were a single conforming lot, whether or not the Development Parcel is in single- or multiple-ownership; provided, however, that violation of this Ordinance by an owner or occupant of a single lot or ownership unit or leased premises within a PMBD shall not be deemed to be a violation by any other owner or occupant within the PMBD provided there exists an appropriate organization of owners as described in subsection 5) below.</p> | <p>None.</p> |

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| <p><i>5) Organization of Owners</i> Prior to exercise of a special permit granted under this section, there shall be formed an organization of all owners of land within the development with the authority and obligation to act on their behalf in contact with the City or its representatives. Such organization shall serve as the liaison between the City and any lot owner, lessee, or licensee within the PMBD which may be in violation of the City's Zoning Ordinance, shall be the primary contact for the City in connection with any dispute regarding violations of this Ordinance and, in addition to any joint and several liability of individual owners, shall have legal responsibility for the PMBD's compliance with the terms of its special permit and site plan approval granted hereunder and with this Ordinance. In addition, the special permit shall provide for the establishment of an advisory council consisting of representatives of the neighborhoods and this organization to assure continued compatibility of the uses within the PMBD and its neighbors during and after construction.</p> | <p>None.</p> |
| <p><i>6) Phasing</i> Any Planned Multi-Use Business Development may be built in multiple phases over a period of time, in accordance with the terms of the special permit granted provided that all improvements and enhancements to public roadways and other amenities are provided contemporaneously with or in advance of such initial construction. The phasing schedule for the PMBD shall be as set forth in the special permit.</p> | <p><i>6) Phasing</i> Any development within a PMBD may be built in multiple phases over a period of time in accordance with the terms of the special permit granted provided that all improvements and enhancements to public transit or public roadways and other amenities are provided contemporaneously with or in advance of occupancy permits for elements of the development that are reliant upon those improvements for access adequacy. The phasing schedule for the PMBD shall be as set forth in the special permit.</p> |

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| <p>7) <i>Post-Construction Traffic Study</i> A Planned Multi-Use Business Development special permit shall provide:</p> | <p>7) <i>Post-Construction Traffic Study</i> A PMBD special permit shall provide for monitoring to determine consistency between the projected and actually experienced number of daily and hourly vehicle trips to and from the site and their distribution onto abutting roads. The special permit shall require a bond or other security satisfactory to the City Traffic Engineer and Director of Planning and Development, in an amount approved by the Board of Aldermen in acting on the special permit, to secure performance as specified below.</p> |
| <p>7(a) Trips generated by the PMBD site, measured at site driveways, prior to the construction of the PMBD;</p> | <p>7(a) Monitoring of vehicle trips for this purpose shall begin not earlier than twelve months following the granting of a final certificate of occupancy, and shall continue periodically over the following twelve months. Measurements shall be made at all driveway accesses to the PMBD.</p> |
| <p>7(b) Trips projected by a professional traffic engineering firm to be generated by and distributed to the PMBD site by the PMBD; and</p> | <p>7(b) The baseline shall be the projected daily and peak hour vehicle trips to and from the PMBD site at full occupancy and their distribution onto abutting roads. The baseline figures shall be those relied upon by the Board of Aldermen in acting on the special permit, having considered the figures determined by the City Traffic Engineer and Director of Planning and Development following submittals by the applicant's professional engineering firm and following staff and consultant peer review of those figures.</p> |

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| <p>7(c) Trips actually generated by and distributed to the PMBD one year after a certificate of occupancy is granted, with limitation to impacts caused by PMBD, as measured through an independent trip generation and distribution analysis, to be paid for by the developer or successor interest but conducted or overseen by the City.</p> | <p>7(c) The experienced actual number of vehicle trips to and from the PMBD and their distribution onto abutting roads shall be measured by a traffic engineering firm approved by the City and retained by the applicant or successor in interest. If full occupancy has not been reached at the time of the measurement being made, the observed figures shall be expanded to reflect no more vacancy than was anticipated in the materials upon which the special permit was approved.</p> |
| <p>7(d) To the extent that (c) exceeds (b) by ten per cent, as measured on a periodic basis over the course of a calendar year, the then owner of the Planned Multi-Use Business Development site shall begin mitigation measures within six months, satisfactory to the Director of Planning and Development and the City Traffic Engineer, to reduce the trip generation variance and the trip distribution variance on roadways as specified by the Director of Planning and Development and the City Traffic Engineer to a level within ten percent of (b) within twelve months after the mitigation is begun. The City's remedy for failure to achieve such a reduction within one year after the analysis described in (c) is completed shall require forfeit of a bond or other security mechanism in an amount to be determined by the Board of Aldermen and included as a condition of the special permit, which funds shall be used for traffic mitigation by the City.</p> | <p>7(d) If the actually experienced number of vehicle trips measured per 7(c) exceeds the baseline number projected per 7(b) by more than ten per cent, mitigation measures are required. Within six months of notification to do so, the then owner of the PMBD site shall begin mitigation measures in order to reduce the trip generation variance and the trip distribution variance to less than ten percent, to be achieved within twelve months after the mitigation is begun. Prior to implementation those mitigation efforts must have been approved as being satisfactory to the City Traffic Engineer and Director of Planning and Development.</p> <p>Upon failure by the owner to achieve the required variance reduction within one year after notification of an excessive variance the bond or other security cited above may be taken as damages.</p> |

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| 8) <i>Modifications</i> Any material modification to a PMBD shall require Site Plan Approval by the Board of Aldermen in accordance with Section 30-23. The following provisions shall apply with respect to any proposed modification of a PMBD: | None. |
| 8(a) A change of use, provided such change is to another use approved in the special permit, or relocation of an approved use within the PMBD shall not require additional approvals under this Ordinance if the total Gross Floor Area within the PMBD devoted to such use does not increase by more than five percent (5%) in the aggregate; | None. |
| 8(b) A change of use that results in a lower net parking requirement for the PMBD (pursuant to Section 30-19) shall not require additional approvals under this Ordinance; and | None. |
| 8(c) A change of use or an increase in the floor area or unit count, as applicable, of a use within the PMBD shall require Site Plan Approval by the Board of Aldermen in accordance with Section 30-23 unless the applicant demonstrates that the total traffic generation of the PMBD, with the proposed change, will not exceed the total traffic generation of the PMBD set forth in the applicant's pre-development traffic study. | None. |
| 8(d) Except as provided above, any reduction in beneficial open space shall require additional approvals under this Ordinance. | None. |
| 8(e) Any condition identified by the Board of Alderman in the special permit as not subject to modification without additional approval shall require additional approvals under this ordinance. | Typo fix Alderman to Aldermen. |

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| <p>9) <i>Applicability</i> Buildings, structures, lots and uses within or associated with a PMBD shall be governed by the applicable regulations for the Business 4 District, except as modified by the provisions of this section 30-15(s). Where provisions of this Ordinance conflict or are inconsistent with the provisions of this section 30-15(s), the provisions of this section 30-15(s) shall govern.</p> | None. |
| <p>10) <i>Additional Filing Requirements for PMBDs.</i> In addition to the provisions of Section 30-23 and 30-24, general application requirements for grant of a special permit for a PMBD are as follows. Applicants must submit in hard copy and by electronic submission (e-filing), unless the applicant demonstrates to the satisfaction of the Director of Planning and Development that electronic submission is not feasible:</p> | <p>10) <i>Additional Filing Requirements for PMBDs.</i> In addition to the provisions of Section 30-23 and 30-24, general application requirements for grant of a special permit for a PMBD are as follows. Applicants must submit in hard copy and by electronic submission (e-filing) compliant with the Mass GIS “Standard for Digital Plan Submittal to Municipalities” unless the applicant demonstrates to the satisfaction of the Director of Planning and Development that electronic submission or compliance with that standard is not feasible:</p> |
| 10(a) Scaled massing model or 3D computer model; | None. |
| 10(b) Narrative analysis describing design features intended to integrate the proposed PMBD into the surrounding neighborhood, including the existing landscape, abutting commercial and residential character and other site specific considerations, as well as an explanation of how the proposed PMBD satisfies each criterion in this section; | None. |
| 10(c) Statement describing how the beneficial open space areas, to the extent open to the public, are intended to be used by the public; | None. |
| 10(d) Site plans showing any "by-right" or special permit alternatives within the current zoning district prior to any site specific rezoning or special permit hereunder; | None. |

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| | <p>10(e) A Roadway and Transportation Plan reflecting the “EOEA Guidelines for EIR/EIS Traffic Impact Assessment” with further attention to public transportation and exceptions, subject to review by the City Traffic Engineer and Director of Planning and Development. The Plan should include the following:</p> <ul style="list-style-type: none"> i) Graphic and narrative description of existing and proposed means of access to and within the site, including motor vehicular, pedestrian, bicycle, and public or private transportation alternatives to single-occupant vehicles. ii) Description of a proposed transportation demand management (TDM) program identifying commitments, if any, to a designated TDM manager, employer contributions to employee public transportation passes, shuttle bus capital contribution, car pool, van pool, guaranteed ride home, flex hours, promotional programs, support for off-site pedestrian and bicycle accommodations, and similar efforts; iii) The anticipated vehicle trip generation reductions resulting from internally captured dual-purpose trips, the TDM program and the means of making change if these reductions are not realized. iv) Detailed analysis and explanation for the maximum peak hour and daily motor vehicle trips projected to be generated by the Development Parcel; v) Analysis of traffic impacts on surrounding roadways, including secondary roads on which traffic to the Development Parcel may have a negative impact. Results are to be summarized in tabular form to facilitate understanding of change from baseline conditions to the buildout conditions in trip |
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| | <p>volumes, volume/capacity ratios, level of service, delays, and queues.</p> <p>vi) The assumptions used with regard to the proportion of automobile use for travel related to the site, the scale of development and the proposed mix of uses, and the amount of parking provided.</p> <p>vii) Analysis of projected transit use and description of proposed improvements in transit access, frequency, and quality of service.</p> |
| 10(e) Area plan showing distances from proposed buildings or structures on abutting parcels or parcels across public ways, along with information on the heights and number of stories of these buildings and any buildings used for the purposes calculating of a height bonus; and | None. |
| 10(f) Proposed phasing schedule, including infrastructure improvements. | None. |
| | 10(g) Shadow study showing shadow impacts on the surroundings for four seasons at early morning, noon, and late afternoon. |

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| <p><i>Section 30-1</i> Section 30-1 is amended by adding the following two definitions:</p> <p><i>Open Space, Beneficial:</i> Areas not covered by buildings or structures, which shall specifically include, but are not limited to: landscaped areas; playgrounds; walkways; plazas, patios, terraces and other hardscaped areas; and recreational areas, and shall not include: (i) portions of walkways intended primarily for circulation, i.e., that do not incorporate landscape features, sculpture or artwork, public benches, bicycle racks, kiosks or other public amenities, or (ii) surface parking facilities, or (iii) areas that are accessory to a single housing unit or (iv) areas that are accessory to a single commercial tenant, and controlled by the tenant thereof, and not made available to the general public. In calculations of the amount of beneficial open space provided, an offset of ten (10) per cent of the otherwise applicable square footage requirements shall be made for the provision of well maintained publicly available green planted areas.</p> <p><i>Development Parcel:</i> The real property on which a Planned Multi-Use Business Development is located, as shown on a Planned Multi-Use Business Development Plan approved by the Board of Aldermen in connection with a special permit under Section 30-15(s).</p> <p><i>Height, Contextual:</i> The vertical distance between the elevations of the following: (a) the Newton Base Elevation utilized by the City as implemented by the Engineering Division and (b) the mid-point between the</p> | <p>Typo fix two definitions to three definitions.</p> |
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| highest point of the ridge of the roof and the line formed by the intersection of the wall plane and the roof plane. Not included in such measurements are 1) cornices which do not extend more than five (5) feet above the roof line; 2) chimneys, vents, ventilators and enclosures for machinery of elevators which do not exceed fifteen (15) feet in height above the roof line; 3) enclosures for tanks which do not exceed twenty (20) feet in height above the roof line and do not exceed in aggregate area ten (10) per cent of the area of the roof; and 4) towers, spires, domes and ornamental features. | |
| <i>Section 30-11(d)</i> Section 30-11(d) is amended by renumbering subparagraph (12) as (13) and adding the following as new subparagraph (12): "In Business District 4, a Planned Multi-Use Business Development;" | None. |
| <i>Section 30-11(i)</i> Section 30-11(i) is amended by renumbering subparagraph (7) as (8) and adding the following as new subparagraph (7): "A Planned Multi-Use Business Development;" | None. |

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Table A.

DENSITY AND DIMENSIONAL REQUIREMENTS FOR PLANNED MIXED BUSINESS DEVELOPMENT

The following rather than the provisions of Table 3 in Section 30-15 shall apply to development under a PMBD special permit.

As noted at Section 30-15(s)4) *Lots*, these requirements apply to the Development Parcel as a whole rather than to any individual lots within it.

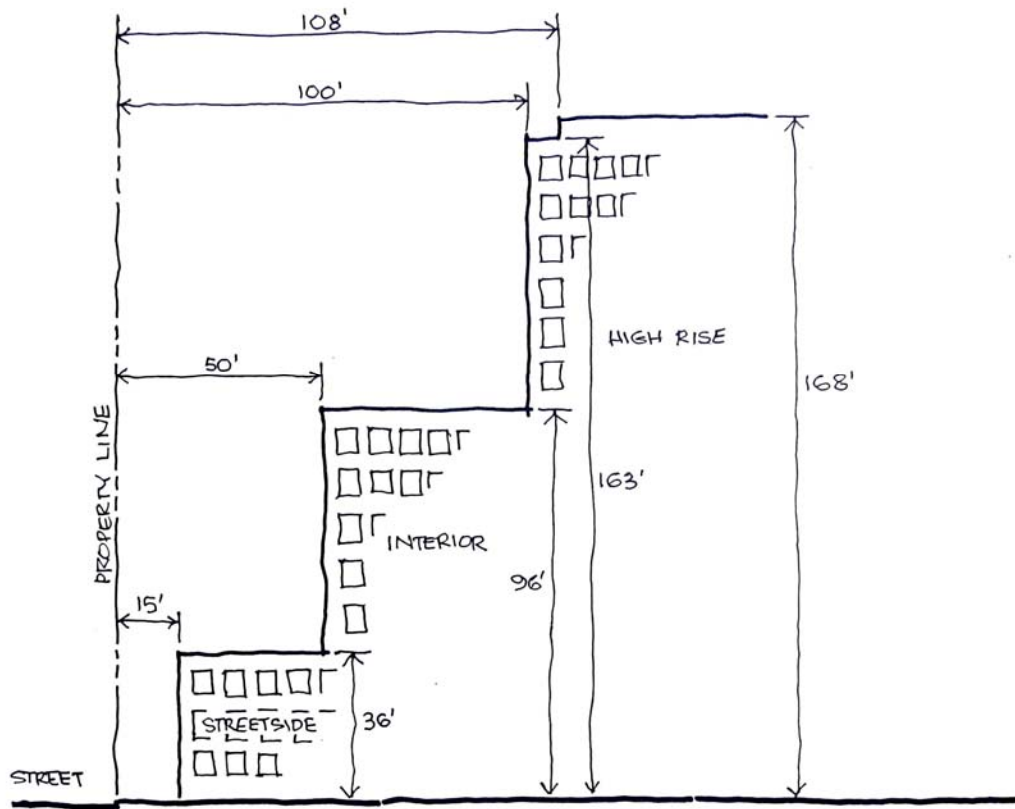
| Area, frontage, and bulk | All development |
|---------------------------------|-----------------|
| Minimum lot area | 10 acres |
| Minimum lot frontage | 100 ft. |
| Max. total floor area ratio | 3.0 |
| Min. lot area per dwelling unit | 1,200 sq. ft. |
| Maximum lot coverage | n/a |
| Min. beneficial open space | 20% |

| Height and setbacks (8) | Streetside façade | Interior development | High rise development |
|-------------------------|--|--|-----------------------|
| Height (feet) | 36 ft. | 96 ft. | 96 ft. (2), (3) |
| Height (stories) | 4 | 8 | 8 (1) |
| Front setback (7) | Lesser of 15 ft. or 1/2 building height (4) | Greater of 50 ft. or 1/2 building height | 100 ft. |
| Side setback (7) | Greater of 15 ft. or 1/2 building height (5) | | 50 ft. (6) |
| Rear setback (7) | | | 100 ft. (6) |

NOTES

- (1) Number of stories may be increased up to a maximum of 14 stories, subject to grant of a special permit by the by the Board of Aldermen and subject to such height and setback limits as established in footnotes 2 and 3.
- (2) The Board of Aldermen may grant a special permit to allow building height may be increased up to a maximum of 168 ft., excluding customary rooftop elements, provided the building is placed a minimum of 100 ft. from the front and rear lot lines and provided that the building does not exceed one (1) foot of excess building height for each 1.5 ft. of separation measured from the front lot line or the rear lot line, whichever is less.
- (3) Any increase in building height requested pursuant to footnote 2 may not result in the proposed building at any point exceeding the contextual height of the tallest building located within 2,000 ft. of the Development Parcel.
- (4) The Board of Aldermen may grant a special permit to allow the front setback to be decreased from 15 ft. to the average setback in the immediate area, which shall be the average of the setbacks of the buildings nearest thereto on either side of the Development Parcel. A vacant lot shall be counted as though occupied by a building set back fifteen (15) feet from the front setback.
- (5) Side and/or rear setbacks shall be a minimum of 20 ft. or 1/2 building height if larger when such setback abuts any Single Residence District or Multi-Residence District or Public Use District.
- (6) Side and/or rear setbacks of non-residential uses shall be a minimum of 100 ft. when such setback abuts any Single Residence District or Multi-Residence District or Public Use District.
- (7) The front, side, and rear setback requirements for parking facility shall not be less than five (5) feet, or shall not be less than fifteen (15) feet when such setback abuts a Single Residential District or Multi-Residential or Public Use District.
- (8) Building height and setbacks shall be measured separately for each building on the site and shall be measured separately for each part of a building which (a) is an architecturally distinctive element, and (b) is setback from the façade of an adjoining lower building element at least twenty (20) feet, and c) for which there is a change in height of at least one story. Setbacks for non-building structures shall be determined by the Board of Aldermen.

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ILLUSTRATIVE SKETCH: SETBACKS AND HEIGHTS